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OFFICE OF THE STATE COMPTROLLER

August 18, 2011

Mr. Darryl C. Towns  
Commissioner/CEO  
NYS Homes and Community Renewal  
25 Beaver Street  
New York, NY 10004

Re: Report 2011-F-14

Dear Commissioner Towns:

Pursuant to the State Comptroller's authority as set forth in Article V, Section 1 of the State Constitution; and Article II, Section 8 of the State Finance Law, we have followed up on the actions taken by officials of the New York State Division of Housing and Community Renewal to implement the recommendations contained in our audit report, *Vacancies at Selected Mitchell-Lama Housing Developments* (Report 2008-S-122).

**Background, Scope and Objectives**

The New York State Division of Housing and Community Renewal (Division) is responsible for the supervision, maintenance and development of affordable low- and moderate-income housing in New York State. In 1955, the Legislature created the Mitchell-Lama Housing Program (Program) in the Private Housing Finance Law (Law) to provide affordable housing for moderate-income families throughout New York State. As of June 30, 2011, there were 174 Division-supervised Mitchell-Lama developments in New York State, including 16 in the borough of Manhattan.

Housing developments built under this Program are owned and managed by private housing companies. Government agencies such as the New York State Housing Finance Agency, the New York State Urban Development Corporation and the State Loan Fund provided the housing companies with low-interest, long-term mortgage loans for up to 95 percent of total development costs. In addition, local municipalities granted property tax exemptions. The housing developments offer either rental or cooperative units. Those with mortgages from State sources must operate under Division supervision and adhere to guidelines that limit their profits and regulate rents. For Mitchell-Lama cooperative developments, the Division also regulates the equity amount paid by incoming shareholders.

To obtain an apartment in a Division-supervised Mitchell-Lama development, interested parties must submit an application and then their names are entered on the development's waiting list. Available apartments should be offered to prospective tenants from the waiting list in the order in which they applied. Many Division-supervised Mitchell-Lama developments in New York City are extremely desirable because of their affordability; consequently the wait time to get an apartment can be lengthy.

In 1957, the Legislature amended the Law to allow housing companies to buy out of the Program after meeting certain conditions such as having been in the Program for a minimum of 20 years and having repaid the government mortgage. When a housing company buys out, it is no longer subject to Division regulations. Shareholders in cooperatives can sell their apartments at market prices and often make substantial profits. Tenants in rental developments that buy out may continue to rent; or they can purchase their unit from the housing company if the development converts to a cooperative or condominium. Tenants who buy their apartments can sell them at market prices. With the maturing of government mortgages and the potential for profit, a number of developments are taking steps towards buying out of the Program.

Our initial audit report, which was issued on December 3, 2009, examined whether vacant housing units at selected Division-supervised Mitchell-Lama housing developments were rented or sold in a timely manner. We found that housing developments under the Division's supervision did not always fill vacant apartments in a timely manner. The objective of our follow-up was to assess the extent of implementation, as of August 3, 2011, of the three recommendations included in our initial report.

### **Summary Conclusions and Status of Audit Recommendations**

Division officials have implemented the three recommendations we made in the initial report.

### **Follow-up Observations**

#### **Recommendation 1**

*Establish a time frame for filling Mitchell-Lama vacancies.*

Status - Implemented

Agency Action - Division officials have established a timeframe for filling vacant Mitchell-Lama apartments. The New York Codes, Rules and Regulations (Regulations) were amended in 2009 to require housing companies to promptly fill vacant apartments with eligible applicants from their waiting lists. In addition, the Division requires housing companies to report each month the number of units that are vacant more than 60 days and to explain the circumstances regarding the vacancy.

#### **Recommendation 2**

*Inform Mitchell-Lama development owners and officials that apartments are not to be warehoused and that a buyout application will not be processed if warehousing exists.*

Status - Implemented

Agency Action - In December 2009, Division officials notified housing company owners, managing agents and site managers that the Regulations governing Division-supervised housing companies had been amended to include specific prohibitions against warehousing apartments. Although Division officials did not specifically inform developments that their buyout applications would not be processed if warehousing existed, they took alternative

steps that achieved the same goal. For example, section 1729-1.5 of the Regulations (Remedies) was added to specify numerous actions the Division can take when housing developments do not comply with Regulations governing areas such as warehousing. These remedies now include actions such as discharging the managing agent, removing the Board of Directors, terminating certain property tax exemptions and holding housing company employees liable for rent losses.

### **Recommendation 3**

*Determine whether Rivercross should be allowed to continue subletting Program apartments.*

Status - Implemented

Agency Action - Division officials have determined that Rivercross should be allowed to continue subletting Program apartments. Division officials explain that Rivercross' original offering plan and Rivercross Board policy permit subletting. Division officials add that they have been in ongoing negotiations with Rivercross regarding apartment affordability, and they plan to include the subletting issue as a discussion point in these negotiations.

Major contributors to this report were Gene Brenenson and Diane Gustard.

We would like to thank management at the New York State Division of Housing and Community Renewal for the courtesies and cooperation extended to our auditors during this review.

Very truly yours,

Cindi Frieder  
Audit Manager

cc. Jon Brown, Director of Internal Audit  
Tom Lukacs, Division of the Budget